



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL

ATTORNEY GENERAL

January 30, 1952

Hon. D. C. Greer
State Highway Engineer
Texas Highway Department
Austin, Texas

Opinion No. V-1400.

Re: Evidence necessary to issue a Texas Certificate of Title on an unregistered house trailer where a manufacturer's certificate is not available.

Dear Mr. Greer:

Your request for an opinion deals with the provisions of Article 1436-1, Vernon's Penal Code, as amended by House Bill 409, Acts 52nd Leg., R.S. 1951, ch. 301, p. 482, governing the issuance of certificates of title on motor vehicles. You have presented a factual situation in connection with your request, the substance of which is as follows:

A house trailer was purchased in the State of Michigan by owner 'A' in 1947. Owner 'A' was issued a certificate of title in Michigan, but the trailer was not registered there because it was not permitted by Michigan law. Subsequently owner 'A' moved to Louisiana where he sold the trailer by executing an assignment of the title to owner 'B'. Neither owner 'A' nor 'B' obtained a certificate of title or registration in Louisiana because such was not authorized under Louisiana law. Later owner 'B' moved the trailer into Texas, where it was used for dwelling purposes, and, because it was not used on the public highways, was not registered. Owner 'B' now desires to sell the trailer, but before doing so must under Texas law obtain a certificate of title if it is to be registered and used on the highways. Under the Texas Highway Department interpretation of the provisions of Article 1436-1, as amended, you have ruled that inasmuch as owner 'B' cannot furnish a manufacturer's certificate on the trailer he must have a current registration receipt on the trailer from some other State or Country than Texas before you can issue to him a certificate of title.

You ask if the Texas Highway Department is correct in the above rulings.

In connection with your request you have stated that your department has also interpreted House Bill 409, supra, to mean that no new vehicle may be titled in the State of Texas unless a manufacturer's certificate is presented as evidence of ownership. This interpretation is in accordance with Attorney General's Opinion V-1211 (1951), which dealt with new motor vehicles. Your present request, however, presents an entirely different question from that answered in Opinion V-1211.

The following definitions are found in Article 1436-1, Vernon's Penal Code, the "Certificate of Title Act":

"The term 'First Sale' means the bargain, sale, transfer, or delivery with intent to pass an interest therein, other than a lien, of a motor vehicle which has not been previously registered or licensed in this State or elsewhere; and such a bargain, sale, transfer or delivery, accompanied by registration or licensing of said vehicle in this State or elsewhere, shall constitute the first sale of said vehicle, irrespective of where such bargain, sale, transfer, or delivery occurred." (Sec. 7, Art. 1436-1, V.P.C., as amended by H.B. 409, Acts 52nd Leg., R.S. 1951, ch. 301, p. 482.)

"The term 'Subsequent Sale' means the bargain, sale, transfer, or delivery, with intent to pass an interest therein, other than a lien, of a motor vehicle which has been registered or licensed within this State or elsewhere, save and except when such vehicle is not required under law to be registered or licensed in this State; and any such bargain, sale, transfer, or delivery of a motor vehicle after same has been registered or licensed shall constitute a subsequent sale, irrespective of where such bargain, sale, transfer, or delivery occurred." (Sec. 8, Art. 1436-1, V.P.C., as amended by H.B. 409, supra.)

"The term 'New Car' means a motor vehicle which has never been the subject of a first sale within this State or elsewhere." (Sec. 9, Art. 1436-1, V.P.C., as amended by H.B. 409, supra.)

"The term 'Used Car' means a motor vehicle that has been the subject of a first sale whether within this State or elsewhere." (Sec. 10, Art. 1436-1, V.P.C., as amended by H.B. 409, supra.)

Section 28 of Article 1436-1, V.P.C., requires a manufacturer's certificate as the basis for a certificate of title to "any new motor vehicle the subject matter of the first sale." The term "new car" as defined in Section 9 of the Act is obviously synonymous with the term "new motor vehicle" as used in Section 28. As to such "new car" or "new motor vehicle", a manufacturer's certificate must be furnished as a prerequisite to the issuance of a certificate of title. Att'y Gen. Op. V-1211 (1951).

The question now presented is with reference to the issuance of a certificate of title on a vehicle which has never been registered and to this extent literally falls within the definition of a new car under Section 9 of Article 1436-1, V.P.C. However, in your specific fact situation the vehicle was not permitted to be registered under the laws of the State or Country where it was sold. It otherwise met all of the requirements of a "first sale" as defined in Section 7, and is in our opinion a "used" vehicle coming within the provisions of Section 10 of the act for the reasons hereinafter discussed.

It is well established that courts will look to the contemporary history of a statute, and to the historical background of the statute, to obtain aid in interpreting the statute. Cousins v. Sovereign Camp W.O.W., 120 Tex. 107, 35 S.W.2d 696 (1931). Thus it may be determined the circumstances under which the statute was passed, the mischief at which it was aimed, and the object sought to be accomplished, Boston Safe Deposit & Trust Co. v. Commissioner of Corporations & Taxation, 273 Mass. 212, 174 N.E. 116 (1930); Fettler v. United States, 34 F.2d 30 (C.C.A. 3rd, 1929).

Prior to the enactment of House Bill 409, Sections 7 and 9 provided as follows:

"Sec. 7. The term 'First Sale' means the bargain, sale, transfer, or delivery within this State with intent to pass an interest

therein, other than a lien of a motor vehicle which has not been previously registered or licensed in this State.

"Sec. 9. The term 'New Car' means a motor vehicle which has never been the subject of a first sale."

In construing the above sections, the court in State Highway Department v. Texas Automotive Dealers Ass'n., 239 S.W.2d 662 (Tex. Civ. App. 1951, error ref. n.r.e.), held that a "new car" which had been the subject of sale, but unregistered, in another State was a "used car" within the meaning of the Certificate of Title Act and could be brought into Texas and a certificate of title obtained thereon without the necessity of a manufacturer's certificate. The fact that House Bill 409, supra, in amending Sections 7, 8, and 9 of the Certificate of Title Act, was designed to modify the holding in State Highway Department v. Texas Automotive Dealers Ass'n., supra, is made clear by the terms of the act itself. It is expressly provided in the emergency clause that "The fact that hundreds of new motor vehicles are now being brought into the State of Texas as used cars, thereby endangering the title of such vehicles under the Certificate of Title Act . . . creates an emergency" This emergency clause may be looked to in arriving at the legislative intent. Huntsville Ind. School Dist. v. McAdams, 148 Tex. 120, 221 S.W.2d 546 (1949).

We think it clear from the above that all the Legislature sought or intended to do in enacting House Bill 409 was to require new cars that were brought into Texas, but which had been the subject of sale elsewhere, to be titled under the provisions of Section 28 (Manufacturer's Certificate), and not otherwise. It would be unreasonable to conclude that the Legislature intended, under the provisions of House Bill 409, to require a manufacturer's certificate as a prerequisite to obtaining a certificate of title in the factual situation presented by you. Such a holding would in many instances preclude the issuance of a certificate of title, and we cannot attribute any such intention to the Legislature. Even though the literal wording of Sections 7, 8, and 9, as amended by House Bill 409, might require the treatment of the vehicle described by you as a "new vehicle," such a result would not be in accord with legislative intent. This vehicle met all the requirements of a "first sale" with the exception of registration. Registration was not permitted

in the State or Country where purchased. If registration had been permitted it would have become a "used" vehicle under the terms of the act itself. Situations such as this have caused the courts to declare:

" . . . 'It is the intention of a law which is the law, and once truly ascertained, it should prevail, even against the strict letter of the law.' And an eminent text writer has said that if a literal interpretation of a statute 'leads to absurd results, the words of the statute will be modified by the intention of the legislature. The modern cases also indicate that courts today rather than beginning their inquiry with the formal words of the act consider from the start the legislative purpose and intention. This tendency is to be commended for it is more consonant with the proper judicial use of statutory materials.' Sutherland Statutory Construction (3rd Ed. by Horack) Vol. 2, Sec. 4701, p. 333. . . ."
Huntsville Ind. School Dist. v. McAdams, supra.

It is therefore our opinion that the vehicle described by you is a "used" vehicle and the Texas Highway Department is not authorized under the provisions of Sections 7, 8, and 9 of Article 1436-1, V.P.C., as amended by House Bill 409, supra, to require a manufacturer's certificate on the vehicle as a prerequisite to the issuance of a certificate of title thereon.

This brings us to a consideration of your requirement that where a manufacturer's certificate cannot be furnished on a vehicle such as described in your request the owner must furnish a current registration receipt on the vehicle from some other State or Country than Texas as a prerequisite to the issuance of a certificate of title. You have advised us orally that you are also requiring a current registration receipt as a prerequisite to the issuance of a certificate of title on used cars purchased in another State prior to the effective date of House Bill 409, and which are now standing on dealers' lots in Texas. It is our understanding that these used cars were registered in another State at some time in the past but such out-of-state registration is not current as of the time an application for certificate of title is filed with you.

The definition of "First Sale" which is quoted above states only that it applies to a vehicle "which has not been previously registered or licensed in this State or elsewhere." The word "current" does not appear anywhere in the statute. It seems apparent that the legislative intent was not to require a current registration or it would have so provided. Certainly there was ample reason for the Legislature not to require a "current" registration. It undoubtedly knew that there were many "used cars" in Texas which were located on dealers' lots or otherwise not operated over the highways which did not and would not have current registration on them from the State where originally registered.

The Texas Highway Department is authorized by Sections 27, 30, and 55 of the Certificate of Title Act (Art. 1436-1, V.P.C.) to make appropriate provisions for the issuance of a certificate of title under all the circumstances reflected by your request. Section 27 authorizes the department to prescribe forms of application for such certificates. Section 30 makes provision for applications on vehicles brought into the State by others than manufacturers and importers, and contemplates tender by the applicant of such evidence as satisfactorily shows proper title. Section 55 authorizes the department to prescribe rules to carry out the orderly operation of the act. Under this authority, the department can provide for the acceptance of such evidence of title as is necessary for the protection of the public. Certainly we can see no reason for requiring a "current" registration from the State or Country where the used car was purchased as a prerequisite to the issuance of title. Such a requirement is, as pointed out by you, forcing the owners of such vehicles to spend large sums of money in securing registration plates "which have served no useful purpose."

You are therefore advised that the Certificate of Title Act does not authorize you to require a "current" registration from the State or Country where a "used" vehicle was originally purchased as a prerequisite to the issuance of a certificate of title on such "used" vehicle in Texas when the vehicle involved was not used in Texas in such a manner as to require a current registration.

SUMMARY

A vehicle originally purchased and titled in Michigan in 1947, but which was not permitted to be registered under the laws of that State, that is later sold and transferred to an owner in Texas, but not used here in such a manner as to require its registration in Texas prior to the effective date of House Bill 409, Acts 52nd Leg., R.S. 1951, ch. 301, p. 482, is a "used" vehicle within the meaning of the "Certificate of Title Act" (Art. 1436-1, V.P.C.). Such vehicle may be lawfully titled in Texas upon presentation of proper evidence of ownership, other than a manufacturer's certificate.

A current registration receipt as a prerequisite to the issuance of a certificate of title is not required for motor vehicles which have been registered or licensed in this State or elsewhere for some prior year or years but have not been used in Texas in such a manner as to require a current registration.

Yours very truly,

APPROVED:

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